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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1285 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JADAV BALDEV BHAI JESINGBHAI

Versus

JADAV UJAMSHIBHAI VALJIBHAI

Appearance:

MR PJ YAGNIK for Petitioner
MR BJ JADEJA for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 28/07/2000

ORAL JUDGEMENT

1. This is a revision u/s 29[2] of the Bombay Rent Act at the instance of the original defendant - tenant, who was sued by the respondent - plaintiff - landlord for a decree of eviction under the provisions of the Bombay Rent Act.

2. The landlord sued the tenant for eviction, firstly on the ground that he was in arrears of rent of six months, and had neglected and omitted to make payment thereof within 30 days of the statutory notice, that the tenant had made a permanent construction upon the suit premises without the permission in writing of the landlord, and that the landlord reasonably and bonafide required the premises for his personal use.

3. The trial Court, on a consideration of the totality of the evidence on record, found against the plaintiff - landlord on all the three grounds and dismissed the suit of the landlord.

4. The landlord therefore preferred an appeal under the provision of the Bombay Rent Act.

4.1 So far as the lower appellate Court is concerned, the issue as regards the reasonable and bonafide requirement of the landlord was not pressed, and therefore, has not been dealt with on merits by the lower appellate Court.

4.2 So far as the landlord's allegation that the tenant has erected a permanent structure on the suit premises without the written permission of the landlord is concerned, the lower appellate Court found against the landlord and rejected this contention in appeal as well.

5. However, the lower appellate Court found on a re-appreciation of the evidence on record, that the tenant was in fact in arrears of rent of six months, and that he had omitted or neglected to make payment thereof within 30 days of the suit notice, that the dispute as to standard rent was raised only in the written statement to the suit, and that therefore, the tenant was liable to suffer eviction under the provision of section 12[3][a] of the Rent Act. Accordingly, the lower appellate Court set aside the findings of the trial Court on this particular issue, and passed a decree of eviction against the tenant u/s 12[3][a] of the said Act.

6. Hence, the present revision at the instance of the defendant - tenant.

7. Having heard the learned counsel for the petitioner - tenant, and on a perusal of such oral and documentary evidence on record to which my attention has been drawn by the learned counsel, I find that I am unable to take a view contrary to the view expressed by

the lower appellate Court. In my opinion, the appreciation of evidence on part of the lower appellate court, and the conclusions drawn therefrom and the findings of fact recorded by the lower appellate court are eminently sustainable and require to be upheld.

8. Only a few salient features require to be noted.

8.1 It is common ground that the rent was payable by the month, and that the month was according to Indian Calender [Samvat Calender], that such monthly rent being the contractual rent was fixed at Rs.18/- per month, that the tenant had not raised any dispute as to standard rent within 30 days of the service of the statutory notice, that the tenant had raised this dispute only in his written statement to the suit. The trial Court had determined the standard rent at Rs.18/- per month, that is to say, the contractual rent was confirmed as the standard rent, and this finding has also been confirmed by the lower appellate Court on the totality of the evidence on record.

9. The landlord had served the statutory notice u/s 12[2] of the Rent Act upon the tenant. The notice was dated 15th September 1980 [at exh.33], and the same was served upon the tenant on the next day i.e. 16th September 1980. The defendant - tenant had not sent any reply to the statutory notice.

9.1 Even a casual perusal of the notice at exh.33 clearly reveals that the same is a notice of demand of arrears of rent specifically for six months, and even the six months have been set out in particular namely, Chaitra Sud 1 to Shravan Vad Amas [S.Y. 2036]. Even the demand in terms of the quantified amount is equally specific and mentioned as Rs.108/-. Therefore, it is equally obvious that this is a demand for arrears of rent for six months at the rate of Rs.18/- per month. Having examined this statutory notice from all possible points of view, I am unable to accept the contention of the learned counsel for the tenant that this is capable of being construed as a demand for five months, and it was because of this possibility that the tenant in fact misunderstood the demand, and consequently sent the money order for Rs.90/-.

9.2 It is found on the facts of the case that the tenant had in fact sent the money order to the landlord in the sum of Rs.90/-, that this was sent soon after he was served with the statutory notice, and was refused by the landlord on 22nd September 1980. According to the

landlord, he was justified in refusing this amount of the money order, being Rs.90/-, because it was not the full tender of the amount due and payable as per the statutory notice, wherein the demand was for Rs.108/-. This factual contention of the landlord requires to be accepted.

9.3 There cannot be any controversy that the landlord would be entitled to refuse part tender of arrears. There is also no dispute that the demand was for Rs.108/-, whereas the money order was for Rs.90/-. Thus, the refusal on part of the landlord was justified.

10. The only defence urged by the tenant is that the narration of the averments in the notice, led him to believe, that it was a demand for five months, and it was for this reason that he sent a money order for Rs.90/-, which in fact is the rent for five months, and this therefore establishes his bonafides, and establishes his readiness and willingness to pay.

10.1 No doubt, the fact that the tenant had transmitted Rs.90/- by money order, and this is the rent due for five months may tend to support his bonafides. However, looking to the plain language used in the statutory notice, it is just not possible to accept the tenant's explanation that, on reasonable construction, it can be understood to be a demand for only five months of rent. As discussed hereinabove, the specific months in respect of which the rent is demanded are mentioned. There is also no dispute, and the oral evidence also indicates that the defendant tenant was aware that, in the specific period of S.Y. 2036, there was an Adhik Mas. Thus, merely counting the names of the months would not have been sufficient, once the tenant was aware that in this period, there was an Adhik Mas. Further more, when the notice specified the rent at Rs.18/- per month, demanded rent at this rate for six months, and then specifically mentioned that the total monetary demand amount is Rs.108/-, the tenant cannot be believed that he bonafidely construed this demand to be a demand for five months of rent. If at all the tenant misconstrued it, such misconstruction was not bonafide.

11. In the premises aforesaid, I find no substance in the present revision, and the same is therefore required to be rejected. Consequently, this revision is dismissed. Rule discharged with no orders as to costs. Interim relief stands vacated.

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